IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5756 OF 2004

Shujauddin Habibulla Qureshi ... Applicant

versus

The State of Maharashtra ... Respondent

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Mr. Subhash Jha i/by Law Global, for the Applicant.

Mr. S.R. Shinde, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

21st December 2004

P.C.:

. Heard Counsel for the parties. Perused the record. The Applicant had approached this Court on the earlier occasion by way of anticipatory bail application in connection with offence, which is registered as CR.No. 197/2004 with Nirmal Nagar Police Station, Mumbai, in relation to offence punishable under sections 420, 506, 465, 467, 468, 34 read with section 109 of the Indian Penal Code. This Court passed

order on 4th November 2004 mentioning the submissions of the parties that the role of the Applicant was limited to notarising the documents which were brought before him by the concerned party for that purpose. As no other document was placed before me by the learned Public Prosecutor, I thought it appropriate to dispose of the application by directing the investigating officer to give 72 hours' notice to the Applicant as and when he decides to arrest the Applicant in connection with the alleged offence. Pursuant to the said order, notice has now been given by the investigating officer on 16th December 2004, as a consequence thereof, the present application has been filed by the Applicant praying for anticipatory bail.

. After going through the documents produced before me, it is seen that the allegation against the Applicant, as stated by the witness, is that he did not even permit the deponent to read the documents in question and insisted that the same should be signed immediately. Besides, having regard to the seriousness of the allegations, in my opinion, this is not a fit case for grant of anticipatory

bail. As rightly subnmitted by the learned A.P.P., the investigation is still in progress and the enormity of the situation will be unravelled only after custodial interrogation of the Applicant.

. To get over this position, Mr. Jha contends that even accepting the prosecution case as it is, at best, it is a case one of professional misconduct by the Applicant or that he was negligent in discharge of his duties. Reliance is placed on section 8 of the Notaries Act to buttress this submission. This submission, however, overlooks that there is no provision in the Notaries Act, or any law, that the Notary should compel a person to sign a document, without permitting him to read the document in question. Besides, there are larger issues which are being investigated into, as is contended by the learned A.P.P.

. Mr. Jha then relied on section 13 of the Notaries Act to contend that no Criminal Court can take cognisance of any allegation against a Notary. This submission overlooks that what is barred is taking cognisance of a professional

misconduct committed by the Notary, but not when an offence is made out, or any allegation of offence committed by the Notary is spelt out by the complainant. Section 13 in any case will not debar the investigating officer from proceeding with the investigation of the case, although it prohibits taking cognisance of the criminal case in question.

. Reliance was then placed on the decision of the Punjab & Haryana High Court reported in 1986 Cri.L.J. 1034 in the case of Attar Chand v. State of Punjab; and another decision of this Court reported in 2001 ALL MR (Cri) 1418 in the case of Thomas Jacob v. State of Maharashtra. Reliance placed on both these decisions is, in my opinion, inapposite, if not ill-advised. Both these decisions are not an authority on the proposition that anticipatory bail should be granted as a matter of course, when the accused is a Notary or an Advocate. If offence is made out and the investigating officer intends to proceed against the person on the basis of materials available with him, in such a situation, no fault can be found with the investigation. The matter may eventually end up

in an acquittal if the prosecution fails to prove the allegation beyond reasonable doubt and the Applicant succeeds in establishing his innocence. These authorities, therefore, are of no avail to the issue presently involved in this application. On the other hand, as mentioned earlier, having regard to the enormity of the matter, which is being investigated into and the complexity of the case, besides the allegations contained in the present report, custodial interrogation will obviously be necessary for a fair investigation.

. Learned Counsel for the Applicant lastly contended that this Court should either refer this application to the Division Bench which is taking up public interest litigation on account of which the present case has emanated, or, defer the hearing of this application. I find no reason to accede to any of these requests. The issue before the Division Bench in the public interest litigation is entirely different, than the one involved in the present application. More so, when the matter has been argued at length by Mr. Jha, I see no reason why hearing of the present application needs to be deferred.

. Hence, this application is dismissed.

(A.M.KHANWILKAR,J.)